

Bill Jennings
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204
Tel: 209-464-5067
Fax: 209-464-1028
E-mail: deltakeep@aol.com

Mike Jackson
Law Office of Mike Jackson
P.O. Box 207
429 W. Main Street
Quincy, CA 95971
Tel: 530-283-1007
Fax: 530-283-0712
E-mail: mjatty@sbcglobal.net

VIA: Electronic Submission
Hardcopy to Follow

Andrew Packard
Law Office of Andrew Packard
319 Pleasant Street
Petaluma, CA 94952
Tel: 707-763-7227
Fax: 707-763-9227
E-mail: andrew@packardlawoffices.com

For Petitioner California Sportfishing Protection Alliance

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

In the Matter of Waste Discharge Requirements For)
The Rumsey Band of Wintun Indians, Cache Creek) **PETITION FOR REVIEW**
Golf Club Water Reclamation Project, Yolo County,)
California Regional Water Quality Control Board –)
Central Valley Region Order No. R5-2006-0121)
)
)
)

Pursuant to Section 13320 of California Water Code and Section 2050 of Title 23 of the California Code of Regulations (CCR), California Sportfishing Protection Alliance (“CSPA” or “petitioner”) petitions the State Water Resources Control Board (State Board) to review and vacate the final decision of the California Regional Water Quality Control Board for the Central Valley Region (“Regional Board”) in adopting Waste Discharge Requirements for the Rumsey Band of Wintun Indians, Cache Creek Golf Club Water Reclamation Project, Yolo County on 26 October 2006. *See* Order No. R5-

2006-0121. The issues raised in this petition were raised in timely written comments and direct testimony.

1. NAME AND ADDRESS OF THE PETITIONERS:

California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, California 95204
Attention: Bill Jennings, Executive Director

2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY ORDER OR RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE PETITION:

Petitioner seeks review of Order No. R5-2006-0121, Waste Discharge Requirements for the Rumsey Band of Wintun Indians, Cache Creek Golf Club Water Reclamation Project, Yolo County. Copies of the orders adopted by the Regional Board at its 26 October 2006 Board meeting are attached hereto as Attachments A.

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT:

26 October 2006

4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:

CSPA submitted a detailed comment letter on 22 October 2006. This letter, the following comments and oral remarks presented during the 26 October 2006 public hearing set forth in detail the reasons and points and authorities why CSPA believes the Order fails to comport with statutory and regulatory requirements. The specific reasons the adopted Orders are improper are::

A. Order fails to Limit Sovereign Immunity within the Order

Finding No. 2 states, in part, “ The Rumsey Band of Wintun Indians (hereafter, “Discharger”) owns and operates a sanitary sewer system and wastewater treatment facility (WWTF) that serves the Cache Creek Casino Resort and Hotel, a fire station, and a small grocery store. The WWTF and its service area are on land held in trust for the Discharger by the United States Bureau of Reclamation...” The Rumsey Band of Wintun Indians (Tribe) is a sovereign Tribe with rights to sovereign immunity. The WWTP is technically not part of the State and therefore, the discharge to “fee lands” constitutes a discharge of waste from a source situated outside the State.

The Order fails to address sovereign immunity. The Order does not contain the necessary language that limits the right of sovereign immunity by accepting the Order and acknowledges the Regional Board's right to pursue compliance with the Basin Plan and California Water Code. As a sovereign Tribe with rights to sovereign immunity, the Discharger does not have to accept future Regional Board actions such as enforcement action including penalties and possible cleanup and abatement orders. The Regional Board lacks the authority to enforce future violations of the Order or require the Tribe to pay penalties.

The WWTP is situated within Tribal Land and is not subject to the Regional Board's Order. The Order fails to require compliance with Resolution No. 68-16, which requires that the discharge meet best practicable treatment or control (BPTC). Finding No. 61 states, in part, "...Discharger's current effort may not constitute full BPTC as intended in Resolution No. 68-16." The Order simply cannot require the Tribe to comply with BPTC at some undisclosed time in the future since the operation of the WWTP is within the Tribal land.

The State Policy for Water Quality Control requires that "Substances not amenable to removal by the treatment system...be prevented from entering the sewer system." The Regional Board's Order has no authority to prevent/regulate discharges to the Tribes sewer system, such as salt brine described in Finding No. 61. Finding No. 61 states, in part, "The excess TDS, chloride, and sodium are the result of controllable factors (i.e., the use of an ion exchange water softening system)." The sewer system and its' management is clearly outside the Regional Board's jurisdiction in that it is not part of the state but under the control of the sovereign tribe. Furthermore, State Policy for Water Quality Control requires "Wastewater treatment systems must provide sufficient removal of environmentally hazardous substances which cannot be controlled at the source to assure against adverse effects on the beneficial uses and aquatic communities." The Regional Board's Order did not limit the extent of sovereign immunity for the treatment system and therefore, cannot ensure compliance at a later time period because the Regional Board has no authority within the sovereign nation. Therefore, as detailed above, the Order fails to comply with requirements of the Basin Plan and California Water Code (CWC).

B. Order Failed to Require Compliance with Title 27

Finding No. 84 is incorrect and states, "The discharge to fee land authorized herein is exempt from the requirements of Title 27, California Code of Regulations (CCR), Section 20380 et seq. (hereafter Title 27). The Title 27 CCR Section 20090(a) states that exemption is reserved for discharges associated with "municipal treatment plants". The definition for municipal is defined in the CWC and the Clean Water Act pertains to public agencies "within the state that operate a POTW." The Tribe, Finding No.1 to 3, is not a municipal treatment plant but rather considered a separate sovereign nation. In addition, the operation of the Casino complex (Finding No. 4), which is the sole discharge, does not conform to standard industrial classification code as municipal treatment plant. In fact, a casino is considered to be a commercial operation. The

discharge is from industrial/commercial operations situated outside the State and is fully subject to Title 27 regulations, just like any other industrial discharger.

The discharge is properly classified as a designated waste. CWC Section 13173 states, “Designated waste,” means either of the following:

1. Hazardous waste that has been granted a variance from hazardous waste management requirements pursuant to Section 25143 of the Health and Safety Code.
2. Nonhazardous waste that consists of, or contains, pollutants that, under ambient environmental conditions at a waste management unit, could be released in concentrations exceeding applicable water quality objectives or that could reasonably be expected to affect beneficial uses of the waters of the state as contained in the appropriate state water quality control plan.

Finding No. 55 states, in part, “Based on the high salinity of the treated effluent (1,300 mg/L TDS) relative to underlying groundwater (approximately 600 mg/L TDS), the proposed discharge poses a threat to groundwater quality.” Finding No. 16, shows that the discharge contains sodium and chloride concentrations that exceed water quality objectives for these elements. These elements will not biodegrade in the soil but given their solubility coefficient but will migrate to the underlying groundwater or in the case of golf course holes nos. 5 and 6, that are situated within the high water boundary for Cache Creek, will enter surface waters. In accordance with Title 27 Section 20210, designated waste shall only be discharged to a Class I or Class II unit. The Order must require the Discharger to comply with Title 27 regulations.

C. Order Fails to Comply with CWA Section 404 permit

The Order’s Attachment A and Finding No.48 indicate that, at least a portion of the disposal area, is within the high water elevation of Cache Creek. However, the Order is silent on water quality certification requirements for CWA 404 permits that are required for fill operations and fails to demonstrate compliance with the Federal and state no net loss policy. Recently, the Regional Board adopted WDRs for the Port of Stockton West Complex Project, San Joaquin County, which included a water quality certification with the Order. The Regional Board intent was clearly not to adopt multiple Orders resulting in a piece-meal approach to the projects. The Order fails to specify any the amount of offset mitigation required for these areas and does not comply with the State Board’s no net loss policy for wetlands. Moreover, the Order must comply a CWA Section 404 and include a water quality certification for the project.

D Order relied upon an incomplete RWD

The Order fails to require submission of a complete RWD. Title 27 Section 21740 contains the requirements for a RWD. The Discharger has not submitted the required information. Insofar as Regional Board staff is contending that the Discharger has submitted a complete RWD, we note that Finding No. 16 reveals that a complete

chemical analysis has not yet been completed and the Discharger has not submitted information sufficient to characterize background groundwater quality or demonstrate that the proposed Order complies with BPTC.

E. Order fails to Comply CWA discharges to surface waters

Finding No. 52 states, in part, “[p]art of this finding may be due to the influence of fresh water infiltrating the shallow zone from Cache Creek.” Finding No. 48 indicates that a portion of the application area is within the five-year flood plain. In addition, the Order fails to address that the storage basin, artificial creek and disposal area are, at least seasonally, hydraulically connected to Cache Creek. The Order is not an NPDES permit and it is illegal to issue a WDR for the discharge of waste to surface water.

F. Order fails to contain a complete antidegradation analysis

Finding No. 59 provides the Regional Boards flawed justification for allowing degradation and states, “Economic prosperity of local communities and associated industry is of maximum benefit to the people of California, and therefore sufficient reason exists to accommodate growth and groundwater degradation around the facility, provided that the terms of the Basin Plan are met.” The Tribe is not part of the State (Finding No.1 to 3) and it is not in the interest or for the prosperity of the people of the State that waste from outside sources degrade the water quality of the State for the sole gain of a single entity.

The Information Sheet, page 2, states “The antidegradation directives of Section 13000 of the California Water Code require that waters of the State that are better in quality than established water quality objectives be maintained “consistent with the maximum benefit to the people of the State.” Waters can be of high quality for some constituents or beneficial uses and not others. Policies and procedures for complying with this directive are set forth in the Basin Plan (including by reference State Water Board Resolution No. 68-16, “Statement of Policy With Respect to Maintaining High Quality Waters in California,” or “Antidegradation” Policy).

Resolution 68-16 is applied on a case-by-case, constituent-by-constituent basis in determining whether a certain degree of degradation can be justified. It is incumbent upon the Discharger to provide technical information for the Regional Water Board to evaluate that fully characterizes:

- All waste constituents to be discharged;
- The background quality of the uppermost layer of the uppermost aquifer;
- The background quality of other waters that may be affected;
- The underlying hydrogeologic conditions;
- Waste treatment and control measures;
- How treatment and control measures are justified as best practicable treatment and control;

- The extent the discharge will impact the quality of each aquifer; and
- The expected degree of degradation.”

The Order fails to require the Discharger to comply with BPTC and acknowledges that certain aspects of wastewater treatment and control practices are not representative of Best Practicable Treatment and Control. Finding No. 61 states, in part, “The excess TDS, chloride, and sodium are the result of controllable factors (i.e., the use of an ion exchange water softening system).” The Order simply fails to comply with BPTC in that easily implemented measures to control the excess of TDS, chloride and sodium are not required. The Regional Board has no authority to require that the Tribe meet BPTC at a later time since the sewer system and water softener are located outside the state and within the sovereign tribe.

Finding No. 30 indicates that South Lake is a 16.1-acre pond on the trust land part of the golf course is lined with a single 60-mil high-density polyethylene liner overlain by 12 inches of soil. However, single liner is simply antiquated technology with a proven track record of failure. (G. Fred Lee, PhD, PE, DEE, Deficiencies in Subtitle D Landfill Liner Failure and Groundwater Pollution Monitoring)

A single liner with hydraulic connectivity of 1×10^{-6} cms/sec (i.e. one foot per year) will discharge waste to the underlying shallow groundwater the first year of operation. In comparison to a single liner, an above-ground tank on a concrete containment structures will not discharge wastewater to the soil. In addition, multiple-liner systems equipped with a leachate collection system or its “engineered equivalent” have been used successfully in the central valley for years. The discharge must comply with Title 27 for a Class II impoundment. Even if the Regional Board contends that the discharge is not required to meet Title 27 regulation, a Class II impoundment or “engineered equivalent” would be necessary to provide BPTC.

The Discharger’s single liners will result in the discharge of waste that unnecessarily degrades underlying groundwater and does not comply with State Board Resolution No. 68-16. While the Regional Board may not specify the method of treatment needed for compliance, the Regional Board is required to ensure the WWTP complies with BPTC by developing limitations and discharge specifications. The Order fails to include Discharge Specifications that limit the amount of leachate to that comparable to treatment systems “i.e. engineered equivalent” that meet BPTC. The proposed single liners are not technology that complies with BPTC.

The Information Sheet states, “Groundwater monitoring has been conducted at the site but the area monitored is large, no systematic program for characterization was implemented, and some data was collected without sampling and analysis plans or quality assurance plans; therefore staff are unable to establish the most appropriate groundwater limits. The Fact Sheet observes, “[t]he proposed Order establishes interim receiving water limitations to assure protection of the beneficial uses of groundwater of the State pending the completion of certain tasks and provides time schedules to complete specified tasks. During this period, degradation may occur from certain constituents, but

can never exceed water quality objectives (or natural background water quality should it exceed objectives) or cause nuisance. Information Sheet, p. 3.

In other words, staff doesn't know what background water quality is, the appropriate effluent limits or whether BPTC is being applied but is proposing to allow some unknown level of degradation to occur justified by some unknown benefit on the assumption that the Discharger will do in the future what is was legally responsible to do before the permit was issued. This is a blatant violation of the state's antidegradation policy.

5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED.

CSPA is a non-profit, environmental organization that has a direct interest in reducing pollution to the waters of the Central Valley. CSPA's members benefit directly from the waters in the form of recreational hiking, photography, fishing, swimming, hunting, bird watching, boating, consumption of drinking water and scientific investigation. Additionally, these waters are an important resource for recreational and commercial fisheries.

Central Valley waterways also provide significant wildlife values important to the mission and purpose of the Petitioners. This wildlife value includes critical nesting and feeding grounds for resident water birds, essential habitat for endangered species and other plants and animals, nursery areas for fish and shellfish and their aquatic food organisms, and numerous city and county parks and open space areas.

CSPA's members reside in communities whose economic prosperity depends, in part, upon the quality of water. CSPA has actively promoted the protection of fisheries and water quality throughout California before state and federal agencies, the State Legislature and Congress and regularly participates in administrative and judicial proceedings on behalf of its members to protect, enhance, and restore declining aquatic resources.

CSPA member's health, interests and pocketbooks are directly harmed by the failure of the Regional Board to develop an effective and legally defensible program addressing discharges to waters of the state and nation.

6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONER REQUESTS.

Petitioners seek an Order by the State Board to:

Vacate Order No. R5-2006-0121 and remand to the Regional Board with instructions prepare and circulate a new tentative order that comports with regulatory requirements.

Petitioners, however, request that the State Board hold in abeyance further action on this Petition for up to two years or further notice by Petitioners, whichever comes first. Petitioners, along with other environmental groups, anticipate filing one or more additional petitions for review challenging decisions by the Regional Board concerning the issues raised in this Petition in the coming months. For economy of the State Board and all parties, Petitioners will request the State Board to consolidate these petitions and/or resolve the common issues presented by these petitions by action on a subset of the petitions. Accordingly, Petitioners urge that holding this Petition in abeyance for now is a sensible approach.

7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION.

CSPA's arguments and points of authority are adequately detailed in the above comments, our 22 October 2006 comment letter that was accepted into the record and our oral testimony presented to the Regional Board on 26 October 2006. Should the State Board have additional questions regarding the issues raised in this petition, CSPA will provide additional briefing on any such questions.

The petitioners believe that an evidentiary hearing before the State Board will not be necessary to resolve the issues raised in this petition. However, CSPA welcomes the opportunity to present oral argument and respond to any questions the State Board may have regarding this petition.

8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGERS, IF NOT THE PETITIONER.

A true and correct copy of this petition, without attachment, was sent electronically and by First Class Mail to Ms. Pamela Creedon, Executive Officer, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive #200, Rancho Cordova, CA 95670-6114.

A true and correct copy of this petition, without attachment, was sent to the Discharger in care of Mr. Mike Reiff, Cache Creek Casino Resort, P.O. Box 65, Brooks, CA 95606.

9. A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD ACTED, OR AN EXPLANATION OF WHY THE PETITIONER COULD NOT RAISE THOSE OBJECTIONS BEFORE THE REGIONAL BOARD.

CSPA presented the issues addressed in this petition to the Regional Board in live oral testimony at the 26 October 2006 hearing on the Order or in comments submitted to the Regional Board on 22 October that were accepted into the record.

If you have any questions regarding this petition, please contact Bill Jennings at (209) 464-5067 or Mike Jackton at 530-283-1007.

Dated: 24 November 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is written in a cursive style with a large, prominent initial "B".

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

Attachments:

- A. Order No. R5-2006-0121